

STATE OF MICHIGAN
COURT OF APPEALS

KERN S. BHUGRA,

Plaintiff- Appellant,

v

UNIVERSITY OF MICHIGAN,

Defendant- Appellee.

UNPUBLISHED

December 20, 1996

No. 186030

Washtenaw Circuit Court

LC No. 89-38112-CZ

Before: Fitzgerald, P.J., and Holbrook, Jr. and E.R. Post,* JJ.

PER CURIAM.

Plaintiff, a member of Sikh religion, filed a complaint alleging discrimination. The circuit court granted defendant's motion for summary disposition on the ground that it was time-barred, MCR 2.116(C)(7). This Court reversed and remanded to the circuit court for a determination of when plaintiff learned that he would not be able to participate in the 1986 Rose Bowl Game. The circuit court again granted defendant's motion for summary disposition under MCR 2.116(C)(7). Plaintiff appeals as of right. We affirm.

In reversing the circuit court's original grant of summary disposition, this Court stated:

If defendant can establish that plaintiff was, in fact, informed before December 15, 1986, that he would not be permitted to appear at the Rose Bowl, it will be entitled to summary disposition under MCR 2.116(C)(7), because plaintiff's not performing was only a consequence of an earlier, allegedly discriminatory, act. *Delaware State College [v Ricks]*, 449 US 285; 101 S CT 4981; 66 L ED 2D 431 (1980)]. If plaintiff can establish that he did not learn of the final decision to bar his participation in the Rose Bowl until on or after December 15, 1986, then his 1989 suit will have been filed within the statutory period and he may proceed on the merits of the case.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant presented the affidavit of Eric Becher, the Marching Band Director at the relevant time period. Mr. Becher averred that plaintiff was a reserve member of the band, not having been chosen for the "Block" after auditioning. Plaintiff participated with the band, but because he was not a member of the Block he could not perform on the field before football games or at half-time. The challenges to determine who would be in the Block and go to the Rose Bowl were held between November 24 and 26 and were posted the following morning. Thus, according to Becher, plaintiff knew by November 27, 1986, that he had not been chosen to attend the Rose Bowl.

Plaintiff did not present any evidence to contradict Becher's statements. Plaintiff's averment that he practiced with the quad section between November 1986 and January 1987 in preparation for the Rose Bowl is consistent with defendant's assertion that reserve members are permitted to do everything with the band except play before the game and at half-time. Further, plaintiff's averment that he was informed by the percussion instructor that he should continue practicing in preparation for the Rose Bowl does not contradict defendant's statement that plaintiff knew in November that he had not been chosen to participate in the Block. Reserve members may be called upon to replace Block members, as noted in the affidavit of Kelly Cairo that "it was known that reserve band members might be asked to go to the Rose Bowl if any band member could not attend." Further, the fact that no quad members challenged for the Block does not imply that such members were not permitted to challenge for the Block.

Based on the evidence presented, we agree with the trial court's well-reasoned opinion that there was no genuine issue of material fact that plaintiff knew prior to December 15, 1986, that he was a reserve member of the marching band only, and that he would not go to the Rose Bowl.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Edward R. Post